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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/651,198

08/28/2003

Harry F. Gladfelter

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09/30/2004

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EXAMINER

NGUYEN, CHAU N

ART UNIT

PAPER NUMBER

2831

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/651,198	<b>Applicant(s)</b> GLADFELTER ET AL.	
	<b>Examiner</b> Chau N Nguyen	<b>Art Unit</b> 2831	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 and 18-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-9-04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species 3, Figure 5, Claims 1-3, 5-10, and 14-17 in the reply filed on Aug. 13<sup>th</sup> 2004 is acknowledged. The traversal is on the ground(s) that Claims 1 and 27 should be generic claims. This is not found persuasive because claim 27 is directed to the claimed invention shown in Figures 3 and 4, Species 2. Examiner, however, agrees that Claim 1 is a generic claim. Accordingly, claims 27, 28, 30 and 31 are hereby withdrawn from consideration as being directed to a non-elected invention.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the

subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 6-8, 10, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti et al. (5,027,864) in view of Brushafer et al. (5,843,542).

Conti et al. discloses a sleeve assembly (Figure 2) for receiving and protecting elongated items within a duct, the sleeve assembly comprising a plurality of separate and independent sleeves positioned lengthwise adjacent to one another, each sleeve comprising a sidewall surrounding and defining a central space, a pull cord (37) positioned within the central space and extending lengthwise of the sleeve, and means (10) for simultaneously drawing the sleeves through the duct (not shown) (re claim 1).

Conti et al. does not disclose the sidewall of each sleeve being formed from a plurality of warp filamentary members interwoven with a plurality of weft filamentary members, the weft members being resiliently biased radially outwardly

so as to maintain the sleeve in an open configuration. Brushafer et al. discloses a woven fabric sleeve having a sidewall which is formed from a plurality of warp (12a,12b) filamentary members interwoven with a plurality of weft (14a, 14b) filamentary members, the weft members being resiliently biased radially outwardly so as to maintain the sleeve in an open configuration (Figure 1, col. 2, lines 55-64). It would have been obvious to one skilled in the art to use the sleeve as taught by Brushafer et al. for the sleeves of Conti et al. since the sleeve taught by Brushafer et al. has increased flexibility and conformability.

The modified sleeve assembly of Conti et al. also discloses the warp and weft members consisting essentially of polyester monofilaments (re claims 6 and 14), the weft monofilaments having a diameter of about 0.25 mm (re claim 8), and the filament members being woven in a twill weave pattern (re claim 10). Re claim 7, it would have been obvious to one skilled in the art to choose a suitable diameter for the warp monofilaments of Conti et al. to meet the specific use of the resulting sleeve since a greater diameter provides a greater support for the sleeve and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215. Re claims 15-17, it would have been obvious to one skilled in the art that depending on the

specific use of the resulting sleeve, to use nylon or polypropylene for the warp and weft members of Conti et al. since it has been held that within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

5. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti et al. in view of Brushafer et al. as applied to claim 1 above, and further in view of Kite et al. (4,754,685).

The combination of Conti et al. and Brushafer et al. discloses the invention substantially as claimed including an outer jacket surrounding the sleeves and extending lengthwise therealong, the jacket having an inwardly facing surface engaging the sidewalls of the sleeves, the jacket exerting an inwardly compressive force on the sleeves when placed under tension, the jacket being sized so as to forcibly engage the resiliently biased sidewalls of the sleeves substantially along their lengths, the jacket having a cross-sectional profile substantially conforming to the sidewalls. The combination does not disclose the jacket comprising a plurality of interlaced filamentary members which are interlaced by braiding or by weaving. Kite et al. discloses a braided or woven tubular sleeve having increased abrasion resistance and a resilient self-conforming property which enables the sleeve to

conform in close contact with the enclosed subject. It would have been obvious to one skilled in the art to use the sleeve as taught by Kite et al. for the outer jacket (10) of Conti et al. since the sleeve of Kite et al. has increased abrasion resistance and a resilient self-conforming property which enables the sleeve to conform in close contact with the enclosed subject.

***Allowable Subject Matter***

6. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Communication***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chau N Nguyen whose telephone number is 571-272-1980. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on 571-272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Chau N Nguyen  
Primary Examiner  
Art Unit 2831